

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FIDEL ATCHISON,

Plaintiff,

CASE NUMBER: 09-12805

HONORABLE VICTORIA A. ROBERTS

v.

NATIONAL CITY BANK,

Defendant.

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ORDER DENYING MOTION FOR RECONSIDERATION

On July 16, 2009, acting pro se, Plaintiff Fidel Atchison filed a Claim and Complaint for Quiet Title and Demand for Declaratory Judgment against Defendant National City Bank. Defendant moved to dismiss the complaint for lack of jurisdiction under Fed. R. Civ. P. 12(b)(1).

On September 3, the Court found Plaintiff's claims barred by the doctrine of *res judicata* and granted Defendant's motion to dismiss. Specifically, the Court held that Plaintiff's claims were or should have been raised during his eviction proceedings in 36th District Court.

On September 11, 2009, Plaintiff filed an Emergency Motion for Reconsideration for Immediate Consideration (sic) (Dkt. #13). Plaintiff asks the Court to reconsider its decision due to the fact that he did not plead or litigate his claims in state court.

Unfortunately for Plaintiff, "Michigan law defines *res judicata* broadly to bar litigation in the second action not only of those claims actually litigated in the first action, but also *claims arising out of the same transaction that the parties, exercising*

reasonable diligence, could have litigated but did not.” Peterson Novelties, Inc. v. City of Berkley, 259 Mich. App. 1, 11 (2003) (emphasis added) (citations omitted). Plaintiff’s claims arise out of the same transaction that was the subject of foreclosure proceedings in state court; the fact that he did not raise them is no excuse.

Plaintiff’s motion is **DENIED**.

IT IS ORDERED.

s/Victoria A. Roberts

Victoria A. Roberts

United States District Judge

Dated: September 14, 2009

The undersigned certifies that a copy of this document was served on the attorneys of record and Fidel Atchison by electronic means or U.S. Mail on September 14, 2009.

s/Linda Vertriest

Deputy Clerk